UNITED
NATIONS

S

Security Council

Dist.
GENERAL

S/AC.26/1995/1
22 March 1995

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART TWO OF THE SECOND INSTALMENT OF CLAIMS FOR SERIOUS PERSONAL INJURY OR DEATH (CATEGORY "B" CLAIMS)

GE.95-60980

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 3	3
I. LEGAL ISSUES		3
A. Non-Iraqi member of Iraqi armed forces	4	3
B. Death of a potential claimant and the right of his heirs to claim	5	4
II. OTHER ISSUES		4
A. Death claims when family members have submitted separate claim forms for the same deceased	6	4
B. Claims where additional information was requested	7 - 8	4
C. Application of article 41 of the Rules	9	5
III. RECOMMENDATIONS TO THE GOVERNING COUNCIL	10	6
A. Overview of the claims in Part Two of the second instalment	11	7
B. Claims for which compensation is recommended	12	8
C. Claims for which no compensation is recommended	13	11
D. Claims transferred to the category "C" Panel of Commissioners ("transferred" claims)	14	11
E. Eligible claims for which no compensation is recommended at this stage ("suspended" claims)	15	11
F. Claims that require further documentation ("other" claims)	16	11
G. Summary of recommendations	17 - 18	11
Notes		15

INTRODUCTION

1. This is the third report that the Panel of Commissioners appointed for claims in category "B" submits to the Governing Council of the United Nations Compensation Commission in accordance with article 37(e) of the Provisional Rules for Claims Procedure (the "Rules").[1] The recommendations in this third report cover those claims contained in Part Two of the second instalment. The second instalment of category "B" claims is comprised of 4,190 claims and has been divided into two parts for organizational purposes. Part One, which consists of 2,286 claims, was the subject of the Panel's second report[2] that was approved by the Governing Council in Decision 26 on 14 December 1994.[3] Part Two is comprised of 1,904 claims.

2. Claims in Part Two were reviewed by the Panel at its sessions on 22-25 November 1994, 15-20 December 1994 and 17-19 January 1995. These sessions were held in Geneva at the headquarters of the secretariat and were conducted in private.[4] The secretariat staff members attended all of the sessions of the Panel and provided support as required. When necessary, the Panel was assisted by an experienced medical expert that the Executive Secretary appointed to assist the Panel and the secretariat in the review of category "B" claims.[5]

3. The principles established by the Panel in the first[6] and second reports, approved by the Governing Council in Decisions 20[7] and 26, respectively, were applied to the claims in Part Two of the second instalment. This third report raises the legal issues that were not addressed in the Panel's previous reports; it should be read in conjunction with the first and second reports. The annexes to this third report list the individual recommendations made by the Panel for each claim.

I. LEGAL ISSUES

A. Non-Iraqi member of Iraqi armed forces

4. The Panel had before it a claim filed by a non-Iraqi national for a serious personal injury suffered during the relevant time period while on duty as a member of the Iraqi

armed forces. The Panel recalls that the United Nations Compensation Commission was established to indemnify those who suffered losses resulting from Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel declines to recommend compensation for a member of the Iraqi armed forces, even in cases where the claimant does not have Iraqi nationality.

B. Death of a potential claimant and the right of his heirs to claim

5. Part Two included a claim filed by the heirs of a father for the death of his child. In this particular case the son was killed during an air raid in February 1991. The father of the deceased died in November 1991 without having made a claim to the UNCC for the death of his son. A claim was subsequently filed by the father's heirs for the death of the son. The Panel holds that a claim cannot be made by the heirs on behalf of the father, since the latter, while still alive, had not presented a claim for his son's death.

II. OTHER ISSUES

A. Death claims when family members have submitted separate claim forms for the same deceased

6. The Panel notes that included in the claims recommended for compensation in Part Two are some claims where the maximum amount of $US 10,000.00 has already been awarded to family members who submitted claims in the first instalment or in Part One of the second instalment. Successful claimants whose claims are reported in Part Two are entitled to receive compensation on an equal basis from the maximum amount awarded to family members in the first instalment or Part One of the second instalment even though "zero" amounts have been stated with respect to their claims in the annexes attached to this report.[8]/

B. Claims where additional information was requested

7. In the first instalment the Panel had before it a number

of claims for death where no proof of family relationship had been submitted. The Panel requested that the relevant Governments provide additional documentation showing the family relationship between the claimant and the deceased. Three Governments forwarded the documentation as requested, and in its second report the Panel recommended that these claims be awarded compensation. Subsequent to the issuance of the Panel's second report, a fourth Government also submitted the requested evidence for 12 claims. The Panel accordingly recommends that compensation be awarded for these 12 claims from the first instalment that are listed in a separate annex. The amounts recommended for each consolidated claim submission of this Government are the following:

KW/00007/01B	$US 10,000.00
KW/00014/02B	$US 5,000.00
KW/00144/03B	$US 32,500.00

8. Furthermore, in Part One of the second instalment, the Panel requested additional documentation in 93 claims, as documentation presented in such cases was insufficient for the Panel to make a recommendation on the claim. The Panel has so far received additional documentation for one claim. The Panel recommends compensation for this claim that is referred to in a separate annex. The amount recommended by consolidated claim submission is:

KW/00191/4B	$US 10,000.00

C. Application of article 41 of the Rules

9. The Panel was informed by the secretariat that some computational errors had occurred in the amounts awarded for claims covered in the first report. These errors were brought to the attention of the Executive Secretary by Governments in

accordance with article 41 of the Rules.[9]/ The Panel notes that these errors occurred mainly due to the fact that separate claim forms had been filed by family members for the same deceased, and that these separate claim forms were often included in different consolidated claim submissions, thereby making it difficult for the secretariat to locate all of the related claim forms so as to apply the $US 10,000.00 ceiling pursuant to Decision 1 of the Governing Council.[10]/ The Panel recommends that the amounts in three consolidated claim submissions be rectified. The correct amounts for each individual claim in these three consolidated claim submissions are specified in the attached annexes that are being provided separately to the respective Governments. The correct amounts for each of the three consolidated claim submissions at issue are as follows:

Consolidated Claim Submission	Correct Amount	Previous Amount Awarded	Difference
JO/00103/01B	$US 987,500.00	$US 982,500.00	$US 5,000.00
KW/00144/03B	$US 1,202,500.00	$US 1,222,500.00	$US (20,000.00)
TH/00095/01B	$US 12,500.00	$US 10,000.00	$US 2,500.00

The Panel recommends that the difference in amounts resulting from the computational errors in the first report be added to or subtracted from the total amounts awarded to each of the three Governments with respect to the claims covered in this third report.

III. RECOMMENDATIONS TO THE GOVERNING COUNCIL

10. The recommendations for each claim are contained in the annexes to this report. These annexes contain the claimant's name, the UNCC claim number, the national claim number, the deceased's or the injured person's name, and the Panel's recommendation for each element of the claim. The annexes are organized by consolidated claim submissions pursuant to article 37(e) of the Rules. The annexes are being provided to each

respective Government or international organization separately due to their confidentiality.

A. Overview of the claims in Part Two of the second instalment

11. The following is a breakdown of the claims by country by type of loss. The total number of claims may be higher than the total number of claim forms submitted by Governments since one claim form may have been filed for more than one serious personal injury or for more than one death.

Breakdown of the Number of Claims by Country			
Second Instalment: Part Two			
Country	Serious Personal Injury	Death	Total
Algeria	-	1	1
Australia	2	-	2
Bahrain	2	-	2
Canada	1	1	2
Egypt	211	225	436
France	1	-	1
Germany	1	-	1
India	5	2	7
Israel	84	17	101
Italy	1	-	1
Jordan	67	56	123
Kuwait	592	165	757
Lebanon	12	22	34
Malaysia	1	-	1
Mauritius	2	-	2
Morocco	2	2	4
Pakistan	-	3	3
Philippines	50	18	68
Poland	-	2	2
Sri Lanka	2	2	4

Country	Serious Personal Injury	Death	Total
Sudan	40	61	101
Syria	169	18	187
Tunisia	2	3	5
Ukraine	-	1	1
United Kingdom	16	2	18
United States	5	-	5
Yemen	16	71	87
UNDP Jerusalem	-	1	1
UNDP Washington	5	-	5
UNHCR Geneva	1	1	2
UNRWA Vienna	1	-	1
Total	1291	674	1965

B. Claims for which compensation is recommended

12. The Panel recommends that compensation be awarded for 811 claims in Part Two of the second instalment. As noted above, the recommendations on the claims are presented for each country by consolidated claim submission. The amounts of compensation with respect to each consolidated claim submission are as follows:

Total Amount Awarded by Consolidated Claim Submission		
Second Instalment: Part Two		
Country	Consolidated Claim Submission	Total Amount Awarded
Algeria	DZ/448/1B	$10,000.00
Australia	AU/653/5B	$2,500.00
Bahrain	BH/890/5B	$0.00
	BH/965/6B	$0.00
Canada	CA/942/3B	$0.00

Country	Consolidated Claim Submission	Total Amount Awarded
Egypt	EG/542/5B	$707,500.00
	EG/827/11B	$2,500.00
	EG/874/12B	$12,500.00
	EG/906/15B	$2,500.00
	EG/918/13B	$10,000.00
	EG/932/14B	$0.00
	EG/960/16B	$10,000.00
	EG/1007/17B	$60,000.00
France	FR/446/7B	$2,500.00
Germany	DE/552/5B	$2,500.00
India	IN/547/11B	$5,000.00
	IN/966/14B	$0.00
	IN/1006/15B	$2,500.00
Israel	IL/287/1B	$290,000.00
	IL/1015/2B	$17,500.00
Italy	IT/528/4B	$2,500.00
Jordan	JO/437/3B	$112,500.00
	JO/599/4B	$17,500.00
	JO/763/5B	$65,000.00
	JO/893/6B	$32,500.00
Kuwait	KW/546/8B Part Z	$0.00
	KW/593/9B	$122,500.00
	KW/701/10B	$230,000.00
	KW/802/11B	$147,500.00
Lebanon	LB/458/1B	$100,000.00
Malaysia	MY/769/2B	$0.00
Mauritius	MU/993/5B	$0.00
Morocco	MA/483/3B	$5,000.00
	MA/524/4B	$0.00
Pakistan	PK/567/4B	$10,000.00
	PK/776/5B	$10,000.00

Country	Consolidated Claim Submission	Total Amount Awarded
Philippines	PH/507/5B	$0.00
	PH/540/2B	$145,000.00
	PH/556/3B	$2,500.00
	PH/677/6B	$2,500.00
	PH/809/4B	$2,500.00
	PH/987/7B	$0.00
Poland	PL/481/2B	$0.00
Sri Lanka	LK/442/3B	$2,500.00
	LK/560/4B	$2,500.00
	LK/785/5B	$0.00
	LK/975/6B	$5,000.00
Sudan	SD/293/1B	$265,000.00
Syria	SY/288/1B	$137,500.00
Tunisia	TN/472/2B	$20,000.00
Ukraine	UA/490/1B	$5,000.00
United Kingdom	GB/494/15B	$2,500.00
	GB/535/16B	$15,000.00
	GB/690/17B	$2,500.00
	GB/1000/18B	$2,500.00
United States	US/536/7B	$2,500.00
	US/979/8B	$7,500.00
Yemen	YE/559/1B	$290,000.00
UNDP Jerusalem	PP/683/2B	$0.00
UNDP Washington	27/571/1B	$5,000.00
UNHCR Geneva	23/587/1B	$0.00
UNRWA Vienna	PP/1014/3B	$2,500.00
Total		$2,912,500.00

C. Claims for which no compensation is recommended

13. The Panel recommends that no compensation be awarded in 325 claims in Part Two of the second instalment.

D. Claims transferred to the category "C" Panel of Commissioners ("transferred" claims)

14. The Panel requests that the Executive Secretary transfer 126 claims in Part Two of the second instalment to the Panel of Commissioners dealing with the category "C" claims for mental pain and anguish, in accordance with article 32, paragraph 3 of the Rules.

E. Eligible claims for which no compensation is recommended at this stage ("suspended" claims)

15. The Panel "suspends" the recommendations on 515 claims included in Part Two of the second instalment for serious personal injuries on behalf of persons that are asserted to be still in detention in Iraq, and for death claims filed for "missing persons". No award of compensation is recommended at this stage for these claims.

F. Claims that require further documentation ("other" claims)

16. The Panel requests that additional information be provided in 189 cases in Part Two of the second instalment, as documentation presented in such cases is insufficient for the Panel to make an informed recommendation on the merits of the claim. The annexes indicate the specific documentation required under the letter codes M, L, F and O. These codes demonstrate areas where further documentation is required. An explanation as to the type of additional information requested pursuant to each of these codes is being separately provided to each respective Government or international organization.

G. Summary of recommendations

17. The following table summarizes by country all the recommendations made by the Panel in this third report:

Summary of Recommendations by Country						
Country	Claims Recommended for Payment	Claims Not Recommended for Payment*	Transferred Claims	Suspended Claims	Other Claims	Total Amount Awarded
Algeria	1	-	-	-	-	$10,000.00
Australia	1	1	-	-	-	$2,500.00
Bahrain	-	-	2	-	-	$0.00
Canada	-	-	-	-	2	$0.00
Egypt	206	130 [5]	-	-	96	$805,000.00
France	1	-	-	-	-	$2,500.00
Germany	1	-	-	-	-	$2,500.00
India	3	2 [1]	-	-	1	$7,500.00
Israel	94	4	-	-	3	$307,500.00
Italy	1	-	-	-	-	$2,500.00
Jordan	59	29 [5]	1	11	18	$227,500.00
Jordan****	-	-	-	-	-	$5,000.00
Kuwait	201	48	4	503	1	$500,000.00
Kuwait**	11	-	-	-	-	$47,500.00
Kuwait***	1	-	-	-	-	$10,000.00
Kuwait****	-	-	-	-	-	($20,000.00)
Lebanon	19	12	2	-	1	$100,000.00
Malaysia	-	-	1	-	-	$0.00
Mauritius	-	0[1]	1	-	-	$0.00
Morocco	2	1	-	-	1	$5,000.00
Pakistan	2	-	-	-	1	$20,000.00
Philippines	44	17 [2]	-	1	4	$152,500.00
Poland	-	2	-	-	-	$0.00
Sri Lanka	3	-	-	-	1	$10,000.00
Sudan	66	16 [1]	-	-	18	$265,000.00
Syria	42	3 [5]	104	-	33	$137,500.00
Thailand****	-	-	-	-	-	$2,500.00
Tunisia	4	-	-	-	1	$20,000.00
Ukraine	1	-	-	-	-	$5,000.00
United Kingdom	8	1	8	-	1	$22,500.00
United States	4	1	-	-	-	$10,000.00
Yemen	45	35	-	-	7	$290,000.00
UNDP Jerusalem	-	1	-	-	-	$0.00

Country	Claims Recommended for Payment	Claims Not Recommended for Payment*	Transferred Claims	Suspended Claims	Other Claims	Total Amount Awarded
UNDP Washington	2	-	3	-	-	$5,000.00
UNHCR Geneva	-	2	-	-	-	$0.00
UNRWA Vienna	1	-	-	-	-	$2,500.00
Total	823	305 [20]	126	515	189	$2,957,500.00

* Numbers in brackets indicate duplicate claims. Where it was discovered that some category "B" claims had been submitted twice by the same claimant, the Panel made its recommendation on the merits with respect to only one of the claims, and the duplicate claim was not recommended for compensation.

** Claims from the first instalment where additional documentation had been requested by the Panel (see supra paragraph 7).

*** Claims from Part One of the second instalment where additional documentation had been requested by the Panel (see supra paragraph 8).

**** Corrections to claims in the first instalment (see supra paragraph 9).

18. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 19 January 1995

(Signed) Mr. Mohamed Bennouna
Chair

(Signed) Mrs. Denise Bindschedler-Robert
Commissioner

(Signed) Ms. Fang Ping
Commissioner

Notes

[1]/ S/AC.26/1992/10, article 37(e): "Each Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim."

[2]/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims)," S/AC.26/1994/4, (the "second report").

[3]/ "Decision Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims) Taken by the Governing Council of the United Nations Compensation Commission at its 48th Meeting, held on 14 December 1994 in Geneva," S/AC.26/Dec.26 (1994), ("Decision 26").

[4]/ Rules, article 33, paragraph 2; article 30, paragraph 2.

[5]/ Dr. Marcel Dubouloz, former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross, Secretary General of the International Society of Disaster Medicine.

[6]/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)," S/AC.26/1994/1, (the "first report").

[7]/ "Decision Concerning the First Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims) Taken by the Governing Council of the United Nations Compensation Commission at its 43rd Meeting, held on 26 May 1994 in Geneva," S/AC.26/Dec.20 (1994), ("Decision 20").

[8]/ See also paragraphs 42-47 of the second report.

[9]/ Rules, article 41(1): "Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council."

[10]/ "Criteria for Expedited Processing of Urgent Claims," S/AC.26/1991/1, ("Decision 1").